



February 11, 2002

Ms. Elizabeth Lutton
Senior Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR2002-0619

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158414.

The City of Arlington Police Department (the "department") received a request for "the written transcripts and final report of all persons interviewed by you and your department involving any and all aspects of the background investigation prepared on me," including the names of the people that were interviewed, as well as copies of all investigator's notes, and copies of the information obtained during the investigation from any other agency or agency employee interviewed in the investigation. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime;

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution;

Gov't Code § 552.108(a)(1), (b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); Open Records Decision 287 (1981) (law enforcement exception inapplicable to information that does not concern the detection and investigation of crime.) General information about a police officer usually is not excepted from required public disclosure by section 552.108. For example, a police officer's age, law-enforcement background, and previous experience and employment usually are not excepted from disclosure by section 552.108. See Open Records Decision Nos. 562 at 10 (1990), 329 at 1 (1982); See also *Morales v. Ellen* at 525-526 (holding law enforcement exception inapplicable where sexual harassment investigation of police officer did not result in criminal investigation or prosecution.) You do not state that the requested information pertains to an ongoing criminal investigation or prosecution. The information here concerns an administrative employee investigation rather than a criminal investigation. Determining the fitness of an applicant for employment is not directly connected to enforcement of the law. Consequently, because you have not met your burden of showing the applicability of section 552.108, you may not withhold the requested information from disclosure.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an applicant's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). In this instance, the requested information concerns an evaluation of an applicant's overall job suitability, therefore, section 552.122 does not apply.

However, the requested records contain information that is excepted from disclosure under section 552.117(2). The city must withhold those portions of the records that reveal officers' home addresses, home telephone numbers, and social security numbers. See Open Records Decision No. 622 (1994).

In summary, the department must withhold officers' home addresses, home telephone numbers, and social security numbers pursuant to section 552.117(2). The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

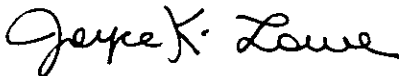
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 157414

Enc: Submitted documents

c: Mr. Jerry Daniels
3300 Thornbird Lane
Arlington, Texas 76001
(w/o enclosures)